MASTER AND SERVANT—MASTER'S LIABILITY FOR TORTS OF SERVANT—SCOPE OF EMPLOYMENT.—A guest in a hotel left a revolver with the hotel clerk, cautioning him to be very careful of it, as it was loaded. The clerk, however, toyed with the gun by twirling it around his finger, and attempted to frighten a young newsboy who was present. The revolver was accidently discharged and killed the newsboy, whose personal representative brought this action against the hotel keeper on the doctrine of *respondeat superior*. *Held*, judgment for the defendant. *Rodgers* v. *Tobias* (Tex. Civ. App.), 225 S. W. 804.

A master is liable for the torts of his servant, committed in the scope of the servant's employment, whether willfully or negligently committed. *Central, etc., R. Co.* v. *Brown*, 113 Ga. 414, 38 S. E. 989, 84 Am. St. Rep. 250; *Nelson, etc., Co.* v. *Lloyd*, 60 Ohio St. 448, 54 N. E. 471, 71 Am. St. Rep. 729. And a servant is acting within the scope of his employment when he is engaged in doing that which he was employed to do, and is at the time about his master's business. TIFFANY, AGENCY, p. 270. And although the servant act in disobedience to his master's orders, still, if the act is within the scope of the servant's employment, the master may be held liable to third persons injured thereby. *Philadelphia, etc., R. Co.* v. *Derby*, 14 How. 468; *Armstrong* v. *Cooley*, 10 Ill. 509; *Wilton* v. *Middlesex R. Co.*, 107 Mass. 108, 9 Am. Rep. 11; *Oliver* v. *North Pacific Transportation Co.*, 3 Ore. 84; *Robinson* v. *Webb*, 11 Bush (Ky.) 464; *Higgins* v. *Watervliet Turnpike Co.*, 46 N. Y. 23, 7 Am. Rep. 293.

This rule is applied with great rigor in the case of carriers, but it is believed that the basis of liability of the master in such cases is not merely the doctrine of *respondeat superior*, but also the high degree of care and the non-assignable duty resting upon the carrier, by virtue of the contractual relation, to guard over the welfare of those placing themselves in his charge. See *Savannah Electric Co.* v. *Wheeler*, 128 Ga. 550, 58 S. E. 38, 10 L. R. A. (N. S.) 1176; *Dwinelle* v. *New York, etc., R. Co.*, 120 N. Y. 117, 24 N. E. 319, 17 Am. St. Rep. 611; *Chesapeake, etc., R. Co.* v. *Francisco*, 149 Ky. 307, 148 S. W. 46; *New Orleans, etc., R. Co.* v. *Jopes*, 142 U. S. 18; *Goddard* v. *Grand Trunk R. Co.*, 57 Me. 202, 2 Am. Rep. 39; *Croaker* v. *Chicago, etc., R. Co.*, 36 Wis. 657, 17 Am. Rep. 504; *Williams* v. *Pullman, etc., Co.*, 40 La. Ann. 87, 8 Am. St. Rep. 512.

Aside from the liability of carriers, it is said that the rule of *respondeat superior* rests on a principle of social duty, that every man in the management of his affairs, whether by himself or his servant, shall so conduct them as not to injure another; and if he does not, and another is injured thereby, he shall be made to answer for it. *Farwell* v. *Boston, etc., R. Co.*, 4 Metc. (Mass.) 49, 38 Am. Dec. 339.

In the principal case it was within the scope of the servant's employment to accept the custody of the revolver. That much is undoubted. But when he twirled the gun around his finger and attempted to frighten the newsboy, it is said that he stepped aside from the business of his master—ceasing, for all intents and purposes, to be in his employ. It is submitted that this distinction seems too fine and technical; that if the custody of the gun was within the scope of the employment, so also was

the manner of exercising such custody; that if by reason of the gross carelessness of the servant the gun exploded and caused injury to another, the master should be held liable in damages to such other.

MUNICIPAL CORPORATIONS—LIABILITY FOR FAILURE OF POLICE TO ENFORCE ORDINANCE.—A city council adopted an ordinance prohibiting the setting off of fireworks within the city limits, except at such times and places as the mayor might permit. The mayor not having exercised such discretion, the police allowed the fireworks and practically suspended the ordinance. A pedestrian was injured by a skyrocket and sued the city, imputing to it no negligence, but seeking to fix its liability on the ground of unauthorized action by the police in allowing a violation of the ordinance. *Held*, the city was not liable. *Gilchrist* v. *City Council of Charleston* (S. C.), 105 S. E. 741.

A municipal corporation is an agency created by the State for the purpose of carrying out in detail the objects of government, and having subordinate and local powers of legislation. *Philadelphia* v. *Fox*, 64 Pa. St. 169; *Heller* v. *Stremmel*, 52 Mo. 309. It possesses such powers and such only as the State confers upon it, and among these is the police power. *Ottawa* v. *Carey*, 108 U. S. 110; *People* v. *Pierce*, 83 N. Y. Supp. 79.

The police power of the State, thus conferred upon municipal corporations, is inherent in the nature and indispensable to the existence of all self-governing bodies, since in its essence it is governmental. *City of Crawfordsville* v. *Braden*, 130 Ind. 149, 28 N. E. 849, 14 L. R. A. 268, 30 Am. St. Rep. 214. Police officers can in no sense be regarded as agents or servants of the city. Their duties are of a public nature. The preservation of the public peace and the enforcement of the laws are derived from the law, and not from the city or town under which these officers hold their appointment. *Buttrick* v. *Lowell*, 1 Allen (Mass.) 172.

The question results, is the city liable for torts committed in the exercise of governmental functions?

The general doctrine resolves this question in the negative. *Irvine* v. *Town of Greenwood*, 89 S. C. 511, 72 S. E. 228; *Triplett* v. *Columbia*, 111 S. C. 7, 96 S. E. 675; *Hill* v. *Boston*, 122 Mass. 344. It is liable, if it negligently fails to keep its streets in a reasonably safe condition, for purposes of public travel, to those who are injured without negligence on their part. *Mayor, etc., of Baltimore* v. *Bassett*, 132 Md. 427, 104 Atl. 39; *City of Montgomery* v. *Ross*, 195 Ala. 362, 70 So. 634. But it is not answerable in tort for failure to exercise its police power, or for negligence in performing duties in that particular. *Vossler* v. *De Smet*, 204 Ill. App. 292; *Robinson* v. *Greenville*, 42 Ohio St. 625.

It is true that persons employed by a city in a proprietary capacity are agents of the city, which is liable for their acts of negligence performed in the discharge of corporate duties. *Michigan City* v. *Werner*, 186 Ind. 149, 114 N. E. 636. But police officers are agents of the State, not of the city. *Buttrick* v. *Lowell*, *supra*.

The conclusion, therefore, is: that since the conservation of the peace is a public duty put by the State into the hands of various public officials, the maintenance of police and the use of its power is governmental;